

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

RENE SAMUEL KENDALL,)	
)	
Plaintiff,)	
)	No. 3:11-CV-388
v.)	(CAMPBELL/SHIRLEY)
)	
SEVIER COUNTY, CITY OF PIGEON FORGE,)	
RUSSELL PARKER, JACK BALDWIN, and)	
GARY CAMPBELL, and)	
MARIANA GUTIERREZ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, Standing Order 13-02, and the referral of the District Judge.

On May 28, 2013, the undersigned entered a Report and Recommendation, which recommended *inter alia* that the Defendants be awarded “reasonable fees and costs incurred in filing the Motion to Dismiss to be paid by counsel for the Plaintiff.” [Doc. 62 at 7]. Defendants were ordered to file an affidavit and supporting documentation stating the fees and costs reasonable incurred in filing the Motion to Dismiss. [*Id.*]. On June 7, 2013, Defendants Pigeon Forge, Jack Baldwin, Russell Parker, and Gary Campbell filed the Affidavit of Reid Spaulding stating that these Defendants had incurred \$1,807.00, in fees and expenses in filing the Motion to Dismiss. [Doc. 66]. On June 18, 2013, the District Judge adopted the Report and Recommendation as the Order of the Court. [Doc. 68 at 1].

Thus, the Court has determined that fees and expenses will be awarded to the Defendants, and Defendants Pigeon Forge, Jack Baldwin, Russell Parker, and Gary Campbell have filed

evidentiary support for their requested fees. Defendant City of Sevierville and Defendant Mariana Gutierrez have not filed a specific request for fees or evidentiary support because they did not file the Motion to Dismiss that yielded the award of fees and expenses. Thus, the remaining issue before the Court is the amount of fees and expenses to be awarded to Defendants Pigeon Forge, Jack Baldwin, Russell Parker, and Gary Campbell.

Defendants Pigeon Forge, Jack Baldwin, Russell Parker, and Gary Campbell filed their request for \$1,807.00, on June 7, 2013. The Court finds that the request, which includes hourly billing entries and a sworn statement of counsel is sufficiently detailed, given the context of the fee award. Moreover, the Court finds that 10.5 hours at a rate of \$164.00 is reasonable based upon the issue addressed, the work performed, and the experience of counsel.

Further, the Court finds that counsel for the Plaintiff has not responded in opposition to the proposed award of \$1,807.00. The Court finds that the time for responding in opposition has expired. Given the procedural posture of this matter, the Court could arguably calculate the time for responding to the Defendants' submission using either the fourteen days allowed for objections under Rule 72(b) of the Federal Rules of Civil Procedure or the fourteen days allowed for responses under Local Rule 7.1, with the addition of three days for electronic service, see Fed. R. Civ. P. 6(d), 5(b)(2)(E). Regardless of whether the period is calculated under Local Rule 7.1 or Rule 72(b) of the Federal Rules of Civil Procedure, the time for responding and/or objecting has expired. The Court may treat this failure to respond as acquiescence to the relief sought. See E.D. Tenn. L.R. 7.2; Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985).

In sum, the Court finds that the attorney's fees and expenses requested by the Defendants are reasonable. The Court further finds that counsel for the Plaintiff has failed to object to the requested fees and expenses, and the time for doing so has expired. Accordingly, Attorney Roy

Steve Merritt, counsel for the Plaintiff, is **ORDERED** to pay to **\$1,807.00** to Defendants Pigeon Forge, Jack Baldwin, Russell Parker, and Gary Campbell, through their counsel Reid Spaulding¹ on or before **September 6, 2013**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge

¹ To the extent these Defendants have not already paid for Mr. Spaulding's services incurred in filing the Motion to Dismiss at the time the money is received by Mr. Spaulding, Mr. Spaulding shall credit the \$1,807.00 toward their account with the law firm of Watson, Roach, Batson, Rowell & Lauderback PLC. If the Defendants have already paid for their services, the law firm of Watson, Roach, Batson, Rowell & Lauderback PLC shall issue a refund to the appropriate payor.